

FCC MAIL SECTION

Federal Communications Commission

DA 96-2134

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DISPATCHED BY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Willcox, Arizona and
Lordsburg, New Mexico)¹

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MM Docket No. 95-50
RM-8581
RM-8662

REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 20, 1996

Released: December 27, 1996

By the Chief, Allocations Branch:

1. The Commission considers herein the *Notice of Proposed Rule Making* ("Notice"), 10 FCC Rcd 4894 (1995), issued in response to a petition for rule making filed by William S. Konopnicki ("petitioner"), licensee of Station KWCX-FM, Channel 252A, Willcox, Arizona, proposing the substitution of Channel 285C3 for Channel 252A and modification of his license accordingly. Petitioner filed supporting comments in response to the *Notice*.² Comments were also filed by Michael T. McKenna ("McKenna"). Comments and a counterproposal were filed on behalf of Lordsburg Broadcasting Associates ("LBA").³ LBA filed reply comments.⁴ No other comments were received.

2. The *Notice* indicated that in accordance with the provisions of Section 1.420(g) of the Commission's Rules, in the event another expression of interest in the petitioner's Class C3 modification proposal at Willcox was received, petitioner had identified another equivalent

¹The community of Lordsburg, New Mexico, has been added to the caption.

²As requested in the *Notice*, petitioner has also complied with the requirements of Section 1.52 of the Commission's Rules by verifying that the information contained in his petition or rule making is true to the best of his knowledge and belief.

³Public Notice of the counterproposal was given June 29, 1995, Report No. 2081.

⁴LBA's reply comments, although dated as of the cut-off date, were filed with the Office of the Secretary of the Commission after the period specified therefor in the Public Notice, *supra*. However, as the reply comments simply reiterate the substance of LBA's argument contained in its counterproposal, acceptance thereof can be accommodated without prejudicing any other pending request. Therefore, we will consider LBA's late-filed reply comments.

channel for any competing interest.⁵ In response to the *Notice*, McKenna stated his interest in applying for a second Class C3 channel at Willcox, whereas LBA requested the allotment of Channel 285C3 to Lordsburg, New Mexico, as an additional local transmission service at that community.⁶ LBA's proposal is mutually exclusive with the proposed substitution of Channel 285C3 for Channel 252A at Willcox. The distance between the two communities is 90.6 kilometers (56 miles) whereas a minimum distance separation of 153 kilometers (95 miles) is required in this instance.⁷ In an effort to accommodate the mutually exclusive proposals, we have determined the availability of alternate Channel 289C3 for consideration at Lordsburg, New Mexico, to resolve the conflict. Therefore, Channel 285C3 may be considered at Willcox without the need for a comparative analysis with the Lordsburg proposal.

3. Based upon the information presented we will grant the modification proposal at Willcox since it will enable Station KWCX-FM to provide an expanded service to the community. Therefore, in accordance with the provisions of Section 1.420(g)(2) of the Commission's Rules, we will substitute Channel 285C3 for Channel 252A at Willcox and modify the license for Station KWCX-FM accordingly. We will also allot Channel 223C3 to Willcox as an additional equivalent class channel based upon McKenna's expression of interest in providing a second local FM service to that community.

4. In response to the counterproposal filed by LBA, we will allot Channel 289C3 to Lordsburg, New Mexico, in order to provide an additional local aural transmission service to that community.

5. Channel 223C3 can be allotted to Willcox, Arizona, consistent with the minimum distance separation requirements of Section 73.207(b)(1) and (3) of the Commission's Rules, provided the transmitter therefor is located at least 3.8 kilometers (2.4 miles) northeast of the community.⁸ Channel 285C3 can be allotted to Willcox in conformity with the technical

⁵The availability of equivalent Channel 223C3 at Willcox, Arizona, at a restricted site 3.8 kilometers (2.3 miles) northeast of the community, utilizing coordinates 32-16-22 North Latitude and 109-48-14 West Longitude, was added to the Commission's data base.

⁶We note that Channel 279C3 was recently allotted to Lordsburg, New Mexico, in response to a request filed by Hidalgo County Broadcasters (RM-8663) in the context of MM Docket No. 95-112. *See Report and Order* released December 20, 1996 (DA 96-2077).

⁷City reference coordinates for Lordsburg, New Mexico, are 32-20-48 North Latitude and 108-42-36 West Longitude.

⁸Coordinates used for Channel 223C3 at Willcox are 32-16-22 North Latitude and 109-48-14 West Longitude. The site restriction is required to avoid a short spacing to the authorized site of Station KWCD(FM), Channel 222A, Bisbee, Arizona, at coordinates 31-28-52 North Latitude and 109-57-30 West Longitude, as well as to vacant channel 223A, Santa Cruz, Sonora, Mexico, at coordinates 31-13-58 North Latitude and 110-36-05 West Longitude (see also footnote 10, *infra*). We note that use of the reference coordinates for Channel 223C3 at Willcox does not negate a short spacing to the allotment reference coordinates

requirements of the Commission's Rules at the petitioner's specified site located 16.2 kilometers (10 miles) east of the community at coordinates 32-14-48 North Latitude and 109-39-52 West Longitude. Channel 289C3 can be allotted to Lordsburg, New Mexico, consistent with Section 73.207(b)(1) and (3) of the Commission's Rules, without the imposition of a site restriction, utilizing coordinates 32-20-48 North Latitude and 108-42-36 West Longitude. Mexican concurrence was obtained for Channels 223C3 and 285C3 as specially negotiated, restricted allotments.⁹ Concurrence was also received for Channel 289C3 at Lordsburg, New Mexico.¹⁰

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective February 10, 1997, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>
Willcox, Arizona	223C3, 285C3
Lordsburg, New Mexico	250C, 279C3, 289C3

7. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of William Konopnicki (File No. BLH-7207) for Station KWCX-FM, IS MODIFIED to specify operation on Channel 285C3 in lieu of Channel 252A, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section

for Channel 223C1, Eager, Arizona, at 34-06-12 North Latitude and 109-17-24 West Longitude, but does comply with Section 73.207(b)(1) at the licensed site of Station KTHQ(FM), Channel 223C1, Eager, at coordinates 34-15-06 North Latitude and 109-35-06 West Longitude.

⁹Channel 223C3 is limited to 25.3 kW ERP and 100m HAAT or its equivalent along the 213.3° azimuth towards Channel 223A, Santa Cruz, Sonora, Mexico. Channel 285C3 is limited to 24.8 kW ERP and 150m HAAT or its equivalent along the 203.4° azimuth towards Channel 284B, Cananea, Sonora, Mexico, and limited to 36.7 kW ERP and 150m HAAT or its equivalent along the 230.5° azimuth towards Channel 286B, Nogales, Sonora, Mexico.

¹⁰Channel 289C3 at Lordsburg, New Mexico, is consistent with the minimum distance separation requirements contained in the 1992 US/Mexico FM Broadcasting Agreement, and therefore may operate at maximum permitted parameters for its class with respect to existing Mexican broadcast facilities and allotments.

73.1620; and

- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

8. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, William Konopnicki, licensee of Station KWCX-FM, is required to submit a rule making fee in addition to the fee required for the applications to effectuate the upgrade at Willcox, Arizona.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. The window period for filing applications for Channel 223C3 at Willcox, Arizona, and for Channel 289C3 at Lordsburg, New Mexico, will open on February 10, 1997, and close on March 13, 1997.

11. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process for Channel 223C3 at Willcox, Arizona, and for Channel 289C3 at Lordsburg, New Mexico, should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau